

REMARKS

Claims 1-6, 8, 9, and 11-27 are pending in the instant application. The Office Action indicates that Claims 1-6, 8, 9, and 11-14 are allowed and Claims 15-27 are rejected for lack of enablement. By this amendment, Claims 15 and 17 have been amended and Claims 16 and 27 have been cancelled, without prejudice to Applicants rights' to pursue the cancelled subject matter in this or related applications. In particular, Claim 15 has been amended to replace "treating or protecting against injury or damage to neural tissue in a mammal" with "protection of an excitable tissue in a mammal having mechanical trauma, multiple sclerosis, diabetic neuropathy, amyotrophic lateral sclerosis, toxicity, hypoxia, or encephalomyelitis," and Claim 17 has been amended to replace "neural tissue" with "excitable tissue". Support for these amendments is found in the specification, for example at page 5, line 18, to page 6, line 2; page 13, lines 16-31, page 19, line 23-29; page 20, lines 1-3, and page 33, line 15, to page 35, line 8. As such, no new matter has been added.

Therefore, Claims 1-6, 8, 9, 11-15, and 17-26 will be pending upon entry of the instant amendment.

THE REJECTIONS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH, FOR LACK OF ENABLEMENT SHOULD BE WITHDRAWN

Claims 15-27 are rejected under 35 U.S.C. § 112, first paragraph, for allegedly lacking enablement in the specification. In particular, the Examiner contends that, while the application is enabling for injury caused by mechanical trauma, multiple sclerosis, diabetic neuropathy and amyotrophic lateral sclerosis (see p. 2 of the Office Action dated 1/19/05), as well as decreasing tissue necrosis in the brain due to trauma and hypoxia, decreasing neuronal injury due to excitotoxicity, and delaying the onset of encephalomyelitis (see p. 5 of the Office Action dated 8/26/02), the instant specification fails to teach the treatment or protection against "any type of injury or damage" to "any type of neural tissue" in a mammal. The Examiner also contends that the Examples provided fail to demonstrate treatment of injured or damaged tissue upon peripheral administration of EPO and that the results disclosed in the Examples are not correlative with the scope of the claims.

Applicants respectfully disagree with the Examiner's characterization of the term "treatment" and the alleged lack of correlation between the results presented in the Examples and the scope of the claims. However, without acquiescing to the propriety of the rejection, in order to present the rejected claims in condition for allowance and/or appeal, Claim 15 has been amended to replace the phrase "treating or protecting against injury or damage" with

“protection of an excitable tissue in a mammal having mechanical trauma, diabetic neuropathy, amyotrophic lateral sclerosis, toxicity, encephalomyelitis or hypoxia.” As such, applicants believe that Claims 15-17 are fully enabled by the specification.

In view of the foregoing amendment applicants submit that the rejection for lack of enablement under 35 U.S.C. §112, first paragraph, has been overcome and should be withdrawn.

CONCLUSION

Entry of the foregoing remarks and amendment into the record of the above-identified application is respectfully requested. Applicants estimate that the remarks and amendment made herein now place the pending claims in condition for allowance. If any issues remain in connection herewith, the Examiner is respectfully invited to telephone the undersigned to discuss the same.

Please charge any required fee to Jones Day Deposit Account No. 50-3013. A duplicate of this sheet is enclosed for accounting purposes.

Respectfully submitted,

Date: July 19, 2005

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